

ASSEMBLY BILL

No. 339

Introduced by Assembly Member Aghazarian

February 11, 2003

An act to amend Sections 50199.50 and 50199.54 of the Health and Safety Code, and to amend Sections 17053.14 and 23608.2 of the Revenue and Taxation Code, relating to farmworker housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as introduced, Aghazarian. Farmworker housing tax credits.

Existing law, known as the Farmworker Housing Assistance Program, authorizes the granting of farmworker housing tax credits by the California Tax Credit Allocation Committee for the construction of farmworker housing that is used for that purpose for a compliance period of at least 30 years pursuant to an agreement with the owner or recipient of the credits.

This bill would decrease that compliance period to 10 years, and define “owner” and “recipient” to mean any person deemed eligible for tax credits by the committee. The bill would also revise the Personal Income Tax Law and the Bank and Corporation Tax Law accordingly.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 50199.50 of the Health and Safety Code
- 2 is amended to read:
- 3 50199.50. For the purposes of this chapter:

1 (a) “Agricultural worker” or “farmworker” shall have the
2 same meaning as specified in subdivision (b) of Section 1140.4 of
3 the Labor Code.

4 (b) “Compliance period” means, with respect to any
5 farmworker housing, the period of ~~30~~ 10 consecutive taxable or
6 income years, beginning with the taxable or income year in which
7 the credit is allowable.

8 (c) “Eligible costs” means the total finance costs, construction
9 costs, excavation costs, installation costs, and permit costs paid or
10 incurred to construct or rehabilitate farmworker housing.
11 “Eligible costs” include, but are not limited to, improvements to
12 ensure compliance with laws governing access for persons with
13 disabilities and costs related to reducing utility expenses.
14 Noneligible costs include land and those costs financed by grants
15 and below-market financing.

16 (d) “Farmworker housing” means housing for agricultural
17 workers and may include, but need not be limited to,
18 conventionally constructed units and manufactured housing.

19 (e) “Farmworker housing tax credits” means the tax credits
20 authorized by Sections 17053.14, 23608.2, and 23608.3 of the
21 Revenue and Taxation Code.

22 (f) “Household” has the same meaning as defined in Section
23 7602 of Title 25 of the California Code of Regulations.

24 (g) “Committee” means the California Tax Credit Allocation
25 Committee as defined in Section 50199.7.

26 (h) “Owner” and “recipient” mean any person or entity
27 deemed eligible for tax credits by the committee pursuant to this
28 chapter regardless of actual ownership of the farmworker housing.

29 SEC. 2. Section 50199.54 of the Health and Safety Code is
30 amended to read:

31 50199.54. (a) ~~In the event that~~ If the ~~owner~~ person who
32 receives a credit pursuant to Section 17053.14 or 23608.2 of the
33 Revenue and Taxation Code demonstrates, to the committee’s
34 satisfaction, that there is no further need for farmworker housing
35 or that it is no longer economically feasible to operate the
36 farmworker housing, the ~~owner~~ person shall pay to the Franchise
37 Tax Board a pro rata portion of the credit previously allowed equal
38 to the amount of any tax credit previously allowed, multiplied by
39 the ratio of the number of years not elapsed in the compliance
40 period divided by ~~30~~ 10.

(b) ~~In the event that~~ If the farmworker housing is damaged or destroyed by a casualty not caused by the owner *or operator*, the compliance period has not expired, and the owner *or operator* commences reasonable action to repair or replace the farmworker housing, the taxpayer may continue to claim the credit as if no destruction had taken place.

SEC. 3. Section 17053.14 of the Revenue and Taxation Code is amended to read:

17053.14. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, an amount, subject to Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(b) (1) For purposes of this section, the “eligible costs” shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. “Eligible costs” include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any other provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for the credit certification.

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

1 (1) Provide forms and instructions for applications for credit
2 certification, as specified pursuant to the Farmworker Housing
3 Assistance Program.

4 (2) Accept applications and issue a certificate to the taxpayer
5 that includes a certification as to the eligible costs described in
6 subdivision (b) that qualify for the credit and the total amount of
7 the credit to which the taxpayer is entitled for the taxable year.
8 Credit in excess of the amount necessary to make the project
9 feasible shall not be allocated. Credits shall be allocated through
10 a minimum of one competitive funding round per year.

11 (3) Obtain the taxpayer's taxpayer identification number, and
12 each partner's taxpayer identification number in the case of a
13 partnership, for tax administration purposes.

14 (4) Provide an annual listing to the Franchise Tax Board, in the
15 form and manner agreed upon by the Franchise Tax Board and the
16 committee, containing the names, taxpayer identification numbers
17 pursuant to paragraph (3), eligible costs, and total amount of credit
18 certified to each taxpayer.

19 (f) For purposes of this section:

20 (1) "Compliance period" means, with respect to any
21 farmworker housing, the period of ~~30~~ 10 consecutive taxable
22 years, beginning with the taxable year in which the credit is
23 allowable.

24 (2) "Construct or rehabilitate" includes reconstruction, but
25 does not include any costs related to acquisition or refinancing of
26 property or structures thereon.

27 (3) "Farmworker Housing Assistance Program" means
28 Chapter 3.7 (commencing with Section 50199.50) of Part 1 of
29 Division 31 of the Health and Safety Code.

30 (4) "Qualified farmworker housing" means housing located
31 within this state ~~which~~ that satisfies the requirements of the
32 Farmworker Housing Assistance Program. The housing may be
33 vacant or occupied.

34 (5) "Committee" means the California Tax Credit Allocation
35 Committee as defined in Section 50199.7 of the Health and Safety
36 Code.

37 (6) "Qualified accountant" means an accountant licensed or
38 certified in this state who is neither an employee of the taxpayer
39 nor related to the taxpayer, within the meaning of Section 267 of
40 the Internal Revenue Code.

1 (g) No deduction or other credit shall be allowed under this part
2 or Part 11 (commencing with Section 23001) to the extent of any
3 eligible costs, as defined in subdivision (b), that are taken into
4 account in computing the credit allowed under this section.

5 (h) The farmworker housing tax credit shall not be allowed
6 unless the taxpayer:

7 (1) Constructs or rehabilitates the property subject to the
8 covenants, conditions, and restrictions imposed by this section and
9 pursuant to the Farmworker Housing Assistance Program, which
10 shall include, but not necessarily be limited to, a requirement that
11 the taxpayer obtain, for approval by the committee, a construction
12 cost audit and certification of eligible costs from a qualified
13 accountant.

14 (2) Subsequent to construction or rehabilitation of the
15 farmworker housing, owns or operates the farmworker housing
16 pursuant to the requirements of this section, or ensures the
17 ownership and operation of the farmworker housing pursuant to
18 the requirements of this section.

19 (i) The requirements of this section shall be set forth in a written
20 agreement between the committee and the taxpayer. The
21 agreement shall include, but not necessarily be limited to, the
22 requirements set forth in the Farmworker Housing Assistance
23 Program.

24 (j) In the case where the credit allowed by this section exceeds
25 the “net tax,” the excess may be carried over to reduce the “net
26 tax” in the following year, and succeeding years if necessary, until
27 the credit has been exhausted.

28 (k) (1) In the case of any disqualifying event, as defined in
29 paragraph (2), there shall be added to the “net tax,” as defined in
30 Section 17039, for the taxable year in which the disqualifying
31 event occurs, the recapture amount computed under paragraph (3)
32 and the interest amount computed under paragraph (4).

33 (2) For purposes of this subdivision, “disqualifying event”
34 shall mean:

35 (A) The committee determines that the certification provided
36 under subdivision (e) was obtained by fraud or misrepresentation.

37 (B) The taxpayer fails to comply with the requirements of the
38 Farmworker Housing Assistance Program, or any other
39 requirement imposed under this section.

(3) For purposes of this subdivision, “recapture amount” means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is ~~30~~ 10.

(4) For purposes of this subdivision, “interest amount” means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of the payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(I) The annual amount of credit granted pursuant to this section and Sections 23608.2 and 23608.3 shall not exceed five hundred thousand dollars (\$500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 23608.2 and 23608.3 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars (\$500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 23608.2 and 23608.3 for the preceding calendar year or years.

SEC. 4. Section 23608.2 of the Revenue and Taxation Code is amended to read:

23608.2. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the “tax,” as defined by Section 23036, an amount, subject to Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(b) (1) For purposes of this section, the “eligible costs” shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to

1 construct or rehabilitate farmworker housing. “Eligible costs”
2 include, but are not limited to, improvements to ensure compliance
3 with laws governing access for persons with disabilities and costs
4 related to reducing utility expenses. Noneligible costs include land
5 and those costs financed by grants and below-market financing.

6 (2) For purposes of paragraph (1), construction or
7 rehabilitation of the farmworker housing shall have commenced
8 on or after January 1, 1997.

9 (3) Notwithstanding any provision of this part, eligible costs
10 shall not include any costs paid or incurred prior to January 1,
11 1997.

12 (c) Notwithstanding any other provision of this part, no credit
13 shall be allowed under this section unless the taxpayer first obtains
14 a certification from the committee that the amounts described in
15 subdivision (b) qualify for the credit under this section and the total
16 amount of the credit allocated to the taxpayer pursuant to the
17 Farmworker Housing Assistance Program.

18 (d) The taxpayer shall do all of the following:

19 (1) Apply to the committee for credit certification.

20 (2) Retain a copy of the certification.

21 (3) Make the certification available to the Franchise Tax Board
22 upon request.

23 (e) The committee shall do all of the following:

24 (1) Provide forms and instructions for applications for credit
25 certification, as specified pursuant to the Farmworker Housing
26 Assistance Program.

27 (2) Accept applications and issue a certificate to the taxpayer
28 that includes a certification as to the eligible costs described in
29 subdivision (b) that qualify for the credit and the total amount of
30 the credit to which the taxpayer is entitled for the taxable year.
31 Credit in excess of the amount necessary to make the project
32 feasible shall not be allocated. Credits shall be allocated through
33 a minimum of one competitive funding round per year.

34 (3) Obtain the taxpayer’s taxpayer identification number, or
35 each shareholder’s taxpayer identification number in the case of an
36 S corporation, for tax administration purposes.

37 (4) Provide an annual listing to the Franchise Tax Board, in the
38 form and manner agreed upon by the Franchise Tax Board and the
39 committee, containing the names, taxpayer identification numbers

1 pursuant to paragraph (3), eligible costs, and total amount of credit
2 certified to each taxpayer.

3 (f) For purposes of this section:

4 (1) “Compliance period” means, with respect to any
5 farmworker housing, the period of ~~30~~ 10 consecutive taxable
6 years, beginning with the taxable year in which the credit is
7 allowable.

8 (2) “Construct or rehabilitate” includes reconstruction, but
9 does not include any costs related to acquisition or refinancing of
10 property or structures thereon.

11 (3) “Farmworker Housing Assistance Program” means
12 Chapter 3.7 (commencing with Section 50199.50) of Part 1 of
13 Division 31 of the Health and Safety Code.

14 (4) “Qualified farmworker housing” means housing located
15 within this state ~~which~~ that satisfies the requirements of the
16 Farmworker Housing Assistance Program. The housing may be
17 vacant or occupied, and it need not be licensed pursuant to the
18 Employee Housing Act at the time of the initiation of construction
19 or rehabilitation.

20 (5) “Committee” means the California Tax Credit Allocation
21 Committee as defined in Section 50199.7 of the Health and Safety
22 Code.

23 (6) “Qualified accountant” means an accountant licensed or
24 certified in this state who is neither an employee of the taxpayer,
25 nor related to the taxpayer within the meaning of Section 267 of
26 the Internal Revenue Code.

27 (g) No deduction or other credit shall be allowed under this part
28 or Part 10 (commencing with Section 17001) to the extent of any
29 eligible costs, as defined in subdivision (b), that are taken into
30 account in computing the credit allowed under this section.

31 (h) The farmworker housing tax credit shall not be allowed
32 unless the taxpayer:

33 (1) Constructs or rehabilitates the property subject to the
34 covenants, conditions, and restrictions imposed by this section and
35 pursuant to the Farmworker Housing Assistance Program, which
36 shall include, but not necessarily be limited to, a requirement that
37 the taxpayer obtain, for approval by the committee, a construction
38 cost audit and certification of eligible costs from a qualified
39 accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the “tax,” as defined in Section 23036, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, “disqualifying event” shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, “recapture amount” means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is ~~30~~ 10.

(4) For purposes of this subdivision, “interest amount” means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest

1 computed using the adjusted annual rate established in Section
2 19521 from the due date of the return for each taxable year in
3 which the credit was claimed to the date of payment of the
4 additional tax resulting from the application of this subdivision.

5 (B) In the case of any disqualifying event described in
6 subparagraph (B) of paragraph (2), zero.

7 (I) The annual amount of credit granted pursuant to this section
8 and Sections 17053.14 and 23608.3 shall not exceed five hundred
9 thousand dollars (\$500,000), provided that the aggregate amount
10 of the credit granted pursuant to this section and Sections 17053.14
11 and 23608.3 for the calendar year 1998 and thereafter may exceed
12 five hundred thousand dollars (\$500,000) per calendar year by an
13 amount equal to any unallocated credits under this section and
14 Sections 17053.14 and 23608.3 for the preceding calendar year or
15 years.

